

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA**

In the Matter of the Decision of
Agricultural Commissioner of
the County of Riverside
(County File No. 466-ACP-RIV-07/08)

Administrative Docket No. 154

DECISION

**Color Green Wholesale Nursery
11551 Arlington Avenue
Riverside, California 92505**

Appellant/

Procedural Background

Under Food and Agricultural Code (FAC) section 12999.5, and Title 3, California Code of Regulations (3 CCR), section 6130, county agricultural commissioners (CACs) may levy a civil penalty up to \$5,000 against a person who violates certain California pesticide laws. After giving notice of the proposed action and providing a hearing, the Riverside CAC found that the appellant, Color Green Wholesale Nursery (Color Green), violated 3 CCR sections 6702(b)(2) and 6760(a) and levied a total penalty of \$500. Color Green Wholesale Nursery appealed the commissioner's civil penalty decision to the Director of the Department of Pesticide Regulation (DPR). The Director has jurisdiction in the appeal under FAC section 12999.5

Factual Background

On May 31, 2007, Ms. Cioc and Ms. Canada of the Riverside CAC's office inspected Color Green. Color Green did not have application specific information posted, did not have soap available for employees working in a treated field, and did not have a material safety data sheet available for certain pesticides it used. Also, Color Green had allowed employees to handle pesticides on which they had not been specifically trained within the previous year.

Appellant's Contentions

Color Green contends on appeal that the fine of \$500 is excessive because the violations are minor. Color Green contends that because it corrected the infractions, and the CAC verified this in a follow-up inspection, further enforcement action was inappropriate and causes an adversarial relationship that undermines the regulations.

Standard of Review

The Director decides the appeal on the record before the Hearing Officer. The Director affirms the CAC's decision if it is supported by substantial evidence. There is substantial evidence if a reasonable person could have reached the same conclusion based on sufficient relevant evidence in the record and inferences from that evidence, even though a reasonable person might also have made different findings. Where an appeal presents a question of the law, the Director decides that issue using her independent judgment.

Findings and Analysis

On appeal, Color Green challenges the CAC decision to take an action to levy a fine and the amount of that fine, not his finding that the violations took place. The CAC may fine companies that violate certain state pesticide laws in Riverside County up to \$5,000 per violation. (FAC section 12999.5.) State law limits the CAC's discretion not to take a civil penalty action and to choose the amount of the penalty. If the CAC documented a "Class B" violation within the previous two years but did not seek a fine, the next time he discovers a Class B violation he must take an action for penalties or refer the case to another agency for enforcement. (3 CCR section 6128(c)(2).) For a Class B violation, the CAC must levy a penalty from \$250 - \$1,000. (3 CCR section 6130(a).) Violations that pose a reasonable possibility of creating a health or environmental effect are Class B violations.

The violations at issue involved failure to post application specific information, failure to train handlers in a timely manner on specific products they handled, failure to maintain all Material Safety Data Sheets, and failure to make soap accessible to workers in a treated field. These types of violations reasonably could have a health or environmental effect. Not posting information on where and when a particular pesticide has been applied increases the chance of exposure; and not having soap available at that site would aggravate such exposure. Within the previous two years, the CAC had documented Color Green's earlier Class B violations on an inspection form and in a Notice of Violation. (See Exhibit P-12 & P-14.) Therefore, the CAC was required by regulation to take an action for at least \$250 per violation.¹ The regulations allow only one warning every two years for violations that create the reasonable possibility of creating a health or environmental effect.

Disposition

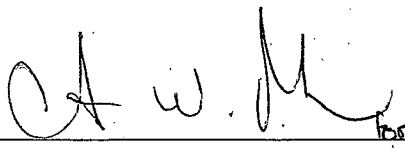
The CAC's decision to levy a penalty of \$500 on Color Green Wholesale Nursery is upheld. The CAC shall notify the Appellant how and when to pay the fine.

Judicial Review

Under FAC section 12999.5, the Appellant may seek judicial review of the Director's decision within 30 days of the date of the decision. The Appellant must file a petition for writ of mandate with the court and bring the action under Code of Civil Procedure section 1094.5.

**STATE OF CALIFORNIA
DEPARTMENT OF PESTICIDE REGULATION**

Dated: MAR 28 2008

By: 
Mary-Ann Warmerdam, Director

¹ The CAC can also levy a \$250 fine for "minor" or "Class C" violations. (See 3 CCR section 6130(a).)